

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to All Plaintiffs

ORDER TO PROVIDE INFORMATION

On the afternoon of January 9, 2017, the Court received word that the Columbus Dispatch was reporting that the Ohio Department of Corrections and Rehabilitation had received additional supplies of midazolam, rocuronium bromide, and potassium chloride. That report was repeated in the Dispatch on January 10, 2017 and in an Associated Press newsbreak on the same date. When the undersigned inquired in open court if there had been a public announcement, the Court was advised that there had not been. The news stories indicate the source of their information is “inventory logs obtained by The Associated Press through a public records request” which is consistent with information provided to the Court verbally by Stephen Gray, general counsel to ODRC. The Associated Press extrapolates from the logs that Ohio now “could conceivably carry out dozens of executions with these supplies.” Although the AP

reports that “[a] spokeswoman for the Ohio prisons agency declined to comment,” the Court requires comment from ODRC.

At the status conference on October 3, 2016, Defendants indicated they intended to execute Ronald Phillips, Raymond Tibbetts, and Gary Otte with the three-drug protocol they announced in that same conference, at least implying that their supply of the drugs was not so plentiful that they expected to be able to continue executions beyond those three men. (Transcript of Conference, ECF No. 672, PageID 19898.) . It was therefore only as to those three Plaintiffs that the Court dissolved the stay of proceedings (Order Partially Vacating Stay and Setting Schedule, ECF No. 658, PageID 19732). As of October 3, 2016, according to the Court’s notes, execution dates had been set for twenty-six death row inmates; inmate and Plaintiff Lawrence Landrum has had a date set since then.¹

If the State of Ohio has sufficient execution drugs on hand to proceed with executions beyond those of Phillips, Tibbetts, and Otte, it is hereby ORDERED to file with the Court, not later than January 13, 2017, a statement of its intentions. Other Plaintiffs besides the named three have a right to proceed with this litigation if Ohio believes it is now ready to proceed with their executions. The Court notes, for example, that the execution of Alva Campbell, Jr., appears to be set for May 10, 2017, and that of Donald Ketterer for a week later on May 17, 2017. If the State intends to proceed with those executions as scheduled, there is now only as much time left before the Campbell execution as there was left before the Phillips execution as scheduled for January 2017 when the Court partially vacated the stay. Counsel are aware of how demanding the scheduling has been since October (reflected in 256 docket entries to date).

¹ The Court has learned this from news accounts; no copy of the death warrant has been filed in either this case or Landrum habeas corpus case, 1:96-cv-641.

Repeated emergency proceedings are not an appropriate way to conduct this important litigation.

January 10, 2017.

s/ *Michael R. Merz*
United States Magistrate Judge